

### **REMARKS**

No claims are amended, claims 6 and 14 were canceled in one or more previous responses, and no new claims are added in this response; as a result, claims 1-5, 7-13, and 15-25 are now pending in this application.

#### **§103 Rejection of the Claims**

##### **Applicable Law.**

In rejecting claims under 35 U.S.C. §103, the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. See M.P.E.P. §2142.

In the recent decision of the Supreme Court on *KSR Int'l Co. v. Teleflex Inc.*<sup>1</sup>, the analysis of obviousness previously set forth in *Graham v. John Deere Co. of Kansas City*<sup>2</sup>, was reaffirmed. The Court in *Graham* set out an objective analysis for applying §103 as follows:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.”<sup>3</sup>

When claim elements are found in more than one prior art reference, the fact finder must determine “whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims.” *In re Kahn*<sup>4</sup>. In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co. of Kansas City*<sup>5</sup>.

Further, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*<sup>6</sup>. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*<sup>7</sup>.

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<sup>1</sup> 127 S.Ct. 1727, 82 USPQ.2d 1385 (2007).

<sup>2</sup> 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

<sup>3</sup> The Court in *KSR v. Teleflex*, at page 1730, quoted the analysis of *Graham* from page 18.

<sup>4</sup> 441 F.3d 977, 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006).

<sup>5</sup> 383 U.S. 1 at 467.

<sup>6</sup> 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

<sup>7</sup> 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Office personnel must rely on the applicant's disclosure to properly determine the meaning of the claims. *Markman v. Westview Instruments*<sup>8</sup>.

Claims 1-2, 7-10, 15-22, and 25.

Claims 1-2, 7-10, 15-22, and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith (U.S. 5,712,800) in view of Marino et al. (U.S. 6,026,165) and further in view of Lotspiech (U.S. 6,609,116).

In an attempt to meet the requirements for forming the proposed combination of Aucsmith, Marino et al., and Lotspiech,<sup>9</sup> the Final Office Action states,<sup>10</sup>

It would be obvious to one having ordinary skill in the art at the time of the invention to include having number of device keys assigned to each receiver in the invention of Aucsmith in order make revoking/re-enabling of key easier as taught in Lotspiech see Abstract.

Taking into account the U.S. Supreme Court's ruling in *KSR Int'l Co. v. Teleflex Inc.*,<sup>11</sup> it can be argued that it is not apparent why one of ordinary skill in the art would have a motivation to make the proposed combination as suggested in the Final Office Action.

Lotspiech concerns a system for legitimate user player/recorders to copy content that is received from either a receiver or from a disk onto a blank medium, while updating encryption data on the medium.<sup>12</sup> Aucsmith concerns a communication system utilizing low bandwidth requirements for transmitting an encoded value,<sup>13</sup> which is distinct from copying content to a blank medium.

Thus, the statements in the Final Office Action fail to show why one of ordinary skill in the art would have a motivation to combine Aucsmith with Lotspiech, or would have been led to make the combination Aucsmith with Lotspiech as suggested in the Final Office Action,

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<sup>8</sup> 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff'd*, U.S., 116 S. Ct. 1384 (1996).

<sup>9</sup> Applicants do not admit or agree that any combination or combinations of Aucsmith, Marino et al. and Lotspiech are possible.

<sup>10</sup> See the Final Office Action at page 3, lines 10-13.

<sup>11</sup> See footnote 1.

<sup>12</sup> See *e.g.* Lotspiech at column 3 lines 39-42.

<sup>13</sup> See *e.g.* Aucsmith at column 3, lines 7-10.

especially in view of the differences between Aucsmith and Lotspiech and the claims at issue, as required by *Graham v. John Deere Co. of Kansas City*<sup>14</sup>.

Even if the proposed combination of Aucsmith, Marino et al., and Lotspiech could be formed,<sup>15</sup> the proposed combination of Aucsmith, Marino et al., and Lotspiech fails to teach or suggest all of the subject matter included in claims 1-2, 7-10, 15-22, and 25. As noted in Applicants' previous response,<sup>16</sup> independent claim 1 includes:

A transmission system for providing conditional access to transmitted data; the system including a transmitter and a plurality of receivers coupled via a network;  
the transmitter including means for transmitting:  
to all receivers same the same data encrypted under control of a same authorization key; and  
to all receivers a same key block with a plurality of entries, wherein each entry is associated with a respective different device key, at least some of the entries containing a representation of the authorization key encrypted with the associated device key, and  
each of the receivers being associated with a corresponding set of a plurality of device keys, wherein at least two of the receivers are associated with sets that comprise at least one corresponding device key, each of the receivers including means for receiving the key block and the encrypted data;  
a first decryptor for retrieving the authorization key by taking a single one of the device keys from the corresponding set of a plurality of device keys associated with the receiver and decrypting at least one entry of the key block that is associated with the single one device key; and  
a second decryptor for decrypting the encrypted data under control of the authorization key.  
(Emphasis added).

In Applicants' above mentioned previous response, Applicants provided several statements as to why the proposed combination of Aucsmith and Marino et al. fails to teach or

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<sup>14</sup> 383 U.S. 1 at 467.

<sup>15</sup> Applicants do not admit or agree that any combination or combinations of Aucsmith, Marino et al., and Lotspiech are possible.

<sup>16</sup> See Applicants' response mailed December 15, 2006 in response to an Office Action mailed September 15, 2006 in the application.

suggest the subject matter of independent claim 1.<sup>17</sup> Applicants maintain each of these arguments. In addition, the arguments provided in Applicants' previous response were deemed to be persuasive, and the rejection of claim 1 under 35 U.S.C. § 103(a) in view of Aucsmith and Marino et al. was withdrawn in the currently pending Final Office Action. Further, the Final Office Action admits that neither Aucsmith nor Marino et al. explicitly disclose a set of keys for each receiver.<sup>18</sup>

The Final Office Action attempts to remedy this deficiency in the proposed combination using Lotspiech. However, the device keys Si in Lotspiech are different from the set of a plurality of device keys as defined in independent claim 1. In Lotspiech, a device key is used for encryption purposes.<sup>19</sup> In independent claim 1, a device key is used for decryption purposes: a single one of the device keys from the corresponding set of plurality of device keys associated with the receiver is taken and at least one entry of the key block that is associated with the single one device key is decrypted.

Moreover, in Lotspiech each user player-recorder is assigned selected keys "S" from the [device key] matrix by a licensing agent. Each user player-recorder is assigned "N" device keys, and each player-recorder is assigned one and only one device key "S" for each key index variable "i".<sup>20</sup> Thus only a subset of the device key matrix is sent to the user player-recorders, which subset differs per user player-recorder.

In contrast to Lotspiech, in independent claim 1- to all receivers a same key block is transmitted. Thus, the Final Office Action fails to rely on the Applicants' disclosure to properly determine the meaning of the claims,<sup>21</sup> and has failed to consider all the words included in independent claim 1 in judging the patentability of that claim.<sup>22</sup>

For at least the reasons stated above, the proposed combination of Aucsmith, Marino et al., and Lotspiech fails to teach or suggest all of the subject matter in independent claim 1, and so

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<sup>17</sup> See Applicant response as noted in footnote 14 at pages 10-14.

<sup>18</sup> See the Final Office Action at page 3, lines 8-9.

<sup>19</sup> See e.g. Lotspiech at column 4, lines 32-38 and column 4, lines 65-67.

<sup>20</sup> See e.g. Lotspiech at column 4, lines 49-55.

<sup>21</sup> See footnote 8.

<sup>22</sup> See footnote 7.

independent claim 1 is not obvious in view of the proposed combination of Aucsmith, Marino et al., and Lotspiech.

In further illustrations of claimed subject matter included in claims 1-2, 7-10, 15-22, and 25 and not taught or suggested by the proposed combination of Aucsmith, and Marino et al., and Lotspiech:

Independent claim 9 includes:

A transmission system for providing conditional access to transmitted data including:

a transmitter and a plurality of receivers coupled via a network;

the transmitter configured to transmit a same data stream encrypted under control of a same authorization key to all receivers and to all receivers a same key block with a plurality of entries, wherein each entry is associated with a different device key, at least one of the entries containing a representation of the authorization key encrypted with the associated device key, and

each of the receivers being associated with a corresponding set of a plurality of device keys and being configured to receive the key block and the encrypted data, with a first decryptor for retrieving the authorization key by taking a single one of the device keys from the corresponding set of a plurality of device keys associated with the receiver and decrypting at least one entry of the key block that is associated with the single one device key and a second decryptor for decrypting the data under control of the authorization key.

Independent claim 21 includes:

A method for providing conditional access to transmitted data over a network including a transmitter and a plurality of receivers, each of said receivers being associated with a corresponding set of a plurality of device keys, said method comprising the steps of:

transmitting the same data to all receivers, wherein said same data is encrypted under control of a same authorization key;

transmitting to all receivers a same key block with a plurality of entries, where each entry is associated with a respective different device key, at least some of the entries containing a representation of the authorization key encrypted with the associated device key;

receiving at each receiver the key block and the encrypted data, wherein each receiver is associated with a set of a plurality of device keys and wherein at least one of the device keys of the set corresponds with a device key of a set associated with another receiver in the system;

retrieving the authorization key at one or more of said plurality of receivers by taking a single one of the device keys from the corresponding set of a plurality of device keys associated with the receiver and decrypting at least one entry of the key block that is associated with the single one device key; and

decrypting the data at said one or more of said plurality of receivers under control of the authorization key.

Independent claim 25 includes:

A transmission system for providing conditional access to transmitted data; the system including a transmitter and a plurality of receivers coupled via a network;

the transmitter to transmit to all receivers the same data encrypted under control of a same authorization key; and

the transmitter to transmit to all receivers a same key block with a plurality of entries, wherein each entry is associated with a respective different device key, at least some of the entries containing a representation of the authorization key encrypted with the associated device key, and

each of the receivers being associated with a corresponding set of a plurality of device keys, wherein at least two of the receivers are associated with sets that comprise at least one corresponding device key, each of the receivers to receive the key block and the encrypted data and including:

a first decryptor for retrieving the authorization key by taking a single one of the device keys from the corresponding set of a plurality of device keys associated with the receiver and decrypting at least one entry of the key block that is associated with the single one device key; and

a second decryptor for decrypting the encrypted data under control of the authorization key.

For reasons analogous to those stated above with respect to independent claim 1, the proposed combination of Aucsmith, Marino et al., and Lotspiech also fails to teach or suggest all of the claimed subject matter included in independent claims 9, 21, and 25, and so independent

claims 9, 21, and 25 are not obvious in view of the proposed combination of Aucsmith, Marino et al., and Lotspiech.

Claims 2, 7-8, 10, 15-20, and 22 depend from one of independent claims 1, 9, and 21, and so include all of the subject matter included in the independent claim from which they depend, and more. For at least the reasons stated above with respect to independent claims 1, 9, and 21, the proposed combination of Aucsmith, Marino et al., and Lotspiech fails to teach or suggest the subject matters as included in each of dependent claims 2, 7-8, 10, 15-20, and 22, and so claims 2, 7-8, 10, 15-20, and 22 are not obvious in view of the proposed combination of Aucsmith, Mario et al., and Lotspiech.

For at least the reasons stated above, the Final Office Action fails to meet its burden for establishing a *prima facie* case of obviousness with respect to claims 1-2, 7-10, 15-22, and 25. Applicants respectfully request withdraw of the rejection, and reconsideration and allowance of claims 1-2, 7-10, 15-22, and 25.

Claims 3-4 and 11-12.

Claims 3-4 and 11-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith (U.S. 5,712,800) in view of Marino et al. (U.S. 6,026,165) and further in view of Lotspiech (U.S. 6,609,116) and further in view of Lotspiech (U.S. 6,118,873 - hereinafter the '873 patent).

Applicants maintain for at least the reasons stated above with respect to the proposed combination of Aucsmith, Marino et al., and Lotspiech that the Final Office Action has not met the requirements for forming the proposed combination of Aucsmith, Mario et al., Lotspiech, and the '873 patent<sup>23</sup> in rejecting claims 3-4 and 11-12. By failing to meet these requirements, the Final Office Action fails to establish a *prima facie* case of obviousness with respect to claims 3-4 and 11-12.

Further, Applicants believe they have established that the proposed combination of Aucsmith, Marion et al., and Lotspiech fails to teach or suggest all of the subject matter included in independent claims 1 and 9. Claims 3-4 depend from independent claim 1, and so include all

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<sup>23</sup> Applicants do not admit or agree that any combination or combinations of Aucsmith, Marino et al., Lotspiech, and the '873 patent are possible.

of the subject matter included in independent claim 1, and more. Claims 11-12 depend from independent claim 9, and so include all of the subject matter included in independent claim 9, and more. For at least the reasons stated above with respect to independent claims 1 and 9, the proposed combination of Aucsmith, Mario et al., and Lotspiech fails to teach or suggest all of the subject matter included in claims 3-4 and 11-12.

Applicants' representatives fail to find in, and the Final Office Action fails to point out in the '873 patent, a teaching or suggestion of the subject matter included in claims 3-4 and claims 11-12 and missing from the proposed combination of Aucsmith, Marino et al., and Lotspiech. Thus, the proposed combination of Aucsmith, Marino et al., Lotspiech, and the '873 patent fails to teach or suggest the subject matter included in claims 3-4 and 11-12, and so claims 3-4 and 11-12 are not obvious in view of the proposed combination of Aucsmith, Mario et al., Lotspiech, and the '873 patent.

For at least the reasons stated above, the Final Office Action fails to meet its burden for establishing a *prima facie* case of obviousness with respect to claims 3-4 and 11-12. Applicants respectfully request withdraw of the rejection, and reconsideration and allowance of claims 3-4 and 11-12.

Claims 23 and 24.

Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith (U.S. 5,712,800) in view of Marino et al. (U.S. 6,026,165) and further in view of Lotspiech (U.S. 6,609,116) and further in view of Traw et al. (U.S. 6,542,610).

Applicants maintain for at least the reasons stated above with respect to the proposed combination of Aucsmith and Marino et al., and Lotspiech that the Final Office Action has not met the requirements for forming the proposed combination of Aucsmith, Mario et al., Lotspiech, and Traw et al.<sup>24</sup> in rejecting claims 23 and 24. By failing to meet these requirements, the Final Office Action fails to establish a *prima facie* case of obviousness with respect to claims 23 and 24.

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<sup>24</sup> Applicants do not admit or agree that any combination or combinations of Aucsmith, Marino et al., Lotspiech, and Traw et al. are possible.



Further, Applicants believe they have established that the proposed combination of Aucsmith, Marion et al., and Lotspiech fails to teach or suggest all of the subject matter included in independent claims 1 and 9. Claims 23 and 24 depend from one of independent claims 1 and 9, and so include all of the subject matter included in the independent claim from which they depend, and more. For at least the reasons stated above with respect to independent claims 1 and 9, the proposed combination of Aucsmith, Mario et al., and Lotspiech fails to teach or suggest all of the subject matter included in claims 23 and 24.

Applicants' representatives fail to find in, and the Final Office Action fails to point out in Traw et al., a teaching or suggestion of the subject matter included in claims 23 and 24 and missing from the proposed combination of Aucsmith, Marino et al., and Lotspiech. Thus, the proposed combination of Aucsmith, Marino et al., Lotspiech, and Traw et al. fails to teach or suggest the subject matter included in claims 23 and 24, and so claims 23 and 24 are not obvious in view of the proposed combination of Aucsmith, Mario et al., and Traw et al.

For at least the reasons stated above, the Final Office Action fails to meet its burden for establishing a *prima facie* case of obviousness with respect to claims 23 and 24. Applicants respectfully request withdraw of the rejection, and reconsideration and allowance of claims 23-24.

#### Allowable Subject Matter

Claims 5 and 13 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants acknowledge the indication of allowability of claims 5 and 13 if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have not amended claims 5 and 13 to place them in independent form at this time. Pursuant to arguments presented above, Applicants respectfully submit that these claims are in condition for allowance.

*Reservation of Rights*

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserve all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 612-371-2132 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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